



1 The ALJ issued a written hearing decision denying benefits on March 7, 2006. The ALJ noted that  
 2 plaintiff was 47 years old, completed 11th grade, and had past relevant work as a certified nursing assistant  
 3 and a home attendant. [AR 18]. The ALJ made the following findings pursuant to the sequential evaluation  
 4 procedure. See 20 C.F.R. §§ 404.1520, 416.920. [AR 18-24]. Plaintiff did not engage in substantial, gainful  
 5 activity after her alleged onset date. Plaintiff had severe, medically determinable impairments consisting  
 6 of mild degenerative disc disease of the lumbar spine and right knee pain. Those impairments did not meet  
 7 or medically equal a listed impairment. See 20 C.F.R. Pt. 404, Supt. P, App. 1. Plaintiff retained the residual  
 8 functional capacity (“RFC”) to perform light work with no squatting or kneeling. Her RFC did not prevent  
 9 plaintiff from performing her past relevant work as a home attendant. Therefore, plaintiff was not under  
 10 a “disability” at any time through the date of the ALJ’s decision. [AR 24]. The Appeals Council denied  
 11 plaintiff’s request for review of the ALJ’s decision, which stands as the final decision of the Commissioner.  
 12 [AR 5-8].

### 13 **Standard of Review**

14 The Commissioner’s denial of benefits should be disturbed only if it is not supported by substantial  
 15 evidence or is based on legal error. Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002). “Substantial  
 16 evidence” means “more than a mere scintilla, but less than a preponderance.” Bayliss v. Barnhart, 427 F.3d  
 17 1211, 1214 n.1 (9th Cir. 2005). “It is such relevant evidence as a reasonable mind might accept as adequate  
 18 to support a conclusion.” Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)(internal quotation marks  
 19 omitted). The court is required to review the record as a whole and to consider evidence detracting from the  
 20 decision as well as evidence supporting the decision. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th  
 21 Cir. 2006); Verduzco v. Apfel, 188 F.3d 1087, 1089 (9th Cir. 1999). “Where the evidence is susceptible to  
 22 more than one rational interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must  
 23 be upheld.” Thomas, 278 F.3d at 954 (citing Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 595, 599  
 24 (9th Cir.1999)).

### 25 **Disputed Issues**

26 The disputed issues are whether (1) the ALJ erred in finding that plaintiff’s limitations from a  
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lipoma<sup>1</sup> located on her right flank did not last for a continuous period of 12 months; and (2) the ALJ failed to provide clear and convincing reasons for rejecting plaintiff's subjective limitations. [JS 3].

### Discussion

#### Limitations from lipoma

Plaintiff contends that the ALJ erred in finding that she had no functional limitations from her right flank lipoma that lasted for a continuous period of 12 months.

To qualify for benefits under the Act, plaintiff must establish an inability to engage in "substantial gainful activity" because of a "medically determinable physical or mental impairment" that "has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A); 20 C.F.R. §§ 404.1509, 416.909; see also Quang Van Han v. Bowen, 882 F.2d 1453, 1458 (9th Cir. 1989). Plaintiff bears the burden of proving that the 12-month duration requirement is satisfied. Roberts v. Shalala, 66 F.3d 179, 182 (9th Cir. 1995), cert. denied, 517 U.S. 1122 (1996); Young v. Sullivan, 911 F.2d 180, 181 (9th Cir. 1990); see 20 C.F.R. §§ 404.1509 & 416.909.

The first reference in the treatment records to plaintiff's lipoma appears in a progress note of April 23, 2001 from plaintiff's visit to a Los Angeles County health clinic for complaints of shortness of breath and chest pain. [AR 397]. The treating physician noted that plaintiff had a right side "ache (tumor)" for six years. The treating source also remarked, however, that plaintiff had "no significant" past medical history. The note does not mention any treatment or intervention for the tumor, either in connection with that visit or previously. [AR 397]. Plaintiff presented for follow-up on April 30, 2001 with no complaints. [AR 396]. In May 2001, she underwent an annual gynecological examination and "denie[d] any pain." [AR 395].

In December 2003, more than two years later, plaintiff presented to the Harbor UCLA Emergency Department complaining of left lower quadrant abdominal pain, worsening over the weekend, and intermittent right flank pain and swelling. [AR177]. She reported taking no medication. [AR179]. The attending physician wrote that plaintiff had "minimal" abdominal pain without evidence of obstruction or significant diverticular disease. Diagnoses were a urinary tract infection and a lipoma on the right flank. [AR 178]. Plaintiff was prescribed an antibiotic. [AR 178].

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<sup>1</sup> A lipoma is a "benign neoplasm of adipose tissue, composed of mature fat cells." Stedman's Medical Dictionary lipoma (27th ed. 2000).

1 Plaintiff returned for reevaluation on January 23, 2004 for recurring pain in her right flank for the  
2 past four days. She said that she had experienced “this type of pain off & on since 1993.” She was not taking  
3 any medication, but she said that Motrin and exercising helped relieve her pain. [AR 173]. She was  
4 discharged with instructions to take over-the-counter Tylenol or Advil as needed for pain and to return in  
5 a week or two if her condition did not improve. [AR 171].

6 In February 2004, plaintiff presented at Harbor UCLA Medical Center for follow-up of abdominal  
7 pain and tumor on her right flank.[AR 169-171]. She said her tumor had been increasing in size since 1993  
8 and that she wanted it removed. [AR 169, 171]. The tumor was described as a “soft, movable mass” about  
9 the size of cantaloupe. [AR 171]. Plaintiff reported that the current episode of pain had started three months  
10 earlier. She said that Motrin helped relieve her pain, but that she was not taking medication. [AR 171]. She  
11 was given a referral to the surgical oncology department. [AR 169-170].

12 Also in February 2004, plaintiff went to the Wilmington Family Health Clinic complaining of a  
13 cough. [AR 2, 189]. She also reported that she wanted a referral for surgery to remove the lipoma, but she  
14 denied any pain. [AR 189]. During a follow-up visit to the same clinic in March 2004, plaintiff complained  
15 of right knee arthralgia for two years, relieved by Motrin. A surgery appointment to remove the lipoma in  
16 April 2004 was noted, but the surgery did not take place as scheduled. [AR 188]. During a May 2004 visit  
17 to Wilmington Family Health Clinic, plaintiff complained of right leg edema and pain no longer adequately  
18 relieved by Motrin. The assessment was likely venous insufficiency, for which elastic hose was prescribed.  
19 [AR 187].

20 In April 2004, plaintiff was seen in the surgical oncology department of Harbor UCLA Medical  
21 Center. She reported that her tumor had started off small and grown slowly larger over the past 12 years.  
22 She reported pain with pressure on the lipoma and “some pain” with walking. [AR 168]. Plaintiff said that  
23 she was not taking any medication. An MRI and blood work were ordered. [AR 168].

24 During a follow-up visit to the surgical oncology department in September 2004, plaintiff  
25 complained of tenderness at the site of the lipoma. [AR 277]. In November 2004, she was seen by another  
26 doctor for pain in her right lower extremity pain, which she rated currently at 5 on a scale of 1 to 10. She  
27 said she was taking Motrin. Plaintiff described her leg pain as worse with bending and sitting for prolonged  
28 periods of time. She reported that the surgical oncology department told her that her leg pain might be

1 secondary to her lipoma. [AR 358]. She was given a diagnosis of chronic low back pain or sciatica with  
2 probable right knee degenerative joint disease. She prescribed Tylenol, and x-rays were ordered.<sup>2</sup> [AR 358].

3 On December 28, 2004, plaintiff was seen at Harbor UCLA Medical Center for complaints of pain  
4 along her entire right side. She was diagnosed with “large lipoma” and started on Neurontin and Tylenol  
5 with codeine for pain. A referral for outpatient surgery was completed. [AR 353-354].

6 In January 2005, plaintiff was seen again for right side pain. She was prescribed Tylenol with  
7 codeine as needed or Motrin. Her surgery referral was noted and an ultrasound referral was requested. [AR  
8 346-347].

9 On February 7, 2005, plaintiff underwent outpatient surgery to excise the lipoma. She was  
10 ambulatory upon discharge. [AR 246-265, 326-329]. On February 23, 2005, she was seen at the Harbor  
11 UCLA Outpatient Clinic for follow-up. She was noted to be “doing well with minimal pain--incisional pain  
12 well controlled by one Vicodin at night.” [AR 243]. She displayed a “well healed” right flank incision and  
13 as “healing well.” [AR 243]. She was discharged from the clinic’s care without further treatment and  
14 encouraged to follow up with her primary care doctor. [AR 243].

15 In April 2005, plaintiff went to Harbor UCLA Medical Center for follow-up. She complained of  
16 lower back pain. She had not taken pain medication that day, but she acknowledged “100% relief” with her  
17 prescription medication, which is not identified in the progress note. Plaintiff was instructed to taker her  
18 medication as ordered. [AR 322]. A post-surgical MRI of the lumbar spine taken in May 2005 was  
19 interpreted as showing “degenerative and constitutional changes” causing “mild spinal canal stenosis,” with  
20 no evidence of impingement noted. [AR 22, 320].

21 During the November 2005 hearing, plaintiff testified that a tumor on her right side had been  
22 removed in February of that year. Asked by her attorney whether the surgery helped her back and leg pain,  
23 she answered, “Well, I think it helped a lot.” [AR 419]. When her attorney asked, “You mean you feel  
24 better because of it?”, plaintiff replied, “Some of it. That was my problem, the tumor.” [AR 419]. Plaintiff  
25 also testified that she began a course of physical therapy in November 2005 for pain from a “pinched nerve”  
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27 <sup>2</sup> This November 2004 treatment report and many other medical records from late 2004 and 2005  
28 were submitted only to the Appeals Council and were not in the record before the ALJ. [See AR 319-410].

1 in her right leg. [AR 419-420]. Plaintiff said that she had been on the waiting list for physical therapy. [AR  
2 420].

3 The ALJ found that plaintiff had

4 a lipoma in the right flank area that was treated conservatively with over-the-counter  
5 medications until it was removed in February 2005. According to the claimant's own  
6 account, the removal of the lipoma has helped a lot. The post-hearing records from Harbor  
7 UCLA show that the claimant reported doing well with minimal pain shortly after the  
8 procedure. I find the claimant's lipoma did not cause any functional limitations lasting 12  
9 months.

10 [AR 21].

11 Prior to January 2004, there is scant mention of the lipoma and no evidence of treatment for any pain  
12 or limitations related to it. Plaintiff sought treatment between December 2003 and April 2004 for  
13 intermittent right flank pain and said she had experienced similar pain off and on in the past, but she did not  
14 complain of any functional limitations. She said that she took no medication for that pain. She was  
15 instructed to take over-the-counter analgesics as needed.

16 In November 2004, plaintiff sought treatment for right leg pain that became worse with bending and  
17 prolonged sitting, but the only treatment prescribed at that time was Tylenol. In December 2004, plaintiff  
18 was prescribed narcotic pain medication. Less than six weeks later, the lipoma was successfully removed.  
19 Post-operatively, plaintiff managed her pain (including pain from her incision, which was healing well) with  
20 only one Vicodin at night. Plaintiff testified that removal of the lipoma "helped a lot." [AR 419]. Post-  
21 operative treatment reports, however, indicate that plaintiff obtained complete relief when she took her  
22 medication as directed. She also said that she started physical therapy for a "pinched nerve" in November  
23 2005 after being on a waiting list. [AR 418-420].

24 Substantial evidence supports the ALJ's finding that plaintiff's did not have any functional  
25 limitations related to her lipoma that met the 12-month durational requirement to establish disability.

#### 26 **Credibility evaluation**

27 Plaintiff also contends that the ALJ failed properly to consider the credibility of her subjective  
28 complaints. [See JS 7-14].

1       Once a disability claimant produces evidence of an underlying physical or mental impairment that  
2 is reasonably likely to be the source of his or her subjective symptoms, the adjudicator is required to  
3 consider all subjective testimony as to the severity of the symptoms. Moisa v. Barnhart, 367 F.3d 882, 885  
4 (9th Cir. 2004); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991) (en banc); see also 20 C.F.R. §§  
5 404.1529(a), 416.929(a) (explaining how pain and other symptoms are evaluated). Although the ALJ may  
6 then disregard the subjective testimony he considers not credible, he must provide specific, convincing  
7 reasons for doing so. Tonapetyan v. Halter, 242 F.3d 1144, 1148 (9th Cir. 2001; see also Moisa, 367 F.3d  
8 at 885 (stating that in the absence of evidence of malingering, an ALJ may not dismiss the subjective  
9 testimony of claimant without providing "clear and convincing reasons"). The ALJ's credibility findings  
10 "must be sufficiently specific to allow a reviewing court to conclude the ALJ rejected the claimant's  
11 testimony on permissible grounds and did not arbitrarily discredit the claimant's testimony." Moisa, 367  
12 F.3d at 885. If the ALJ's assessment of the claimant's testimony is reasonable and is supported by  
13 substantial evidence, it is not the court's role to "second-guess" it. Rollins v. Massanari, 261 F.3d 853, 857  
14 (9th Cir. 2001).

15       In evaluating subjective symptom testimony, the ALJ must consider "all of the evidence presented,"  
16 including the following factors: (1) the claimant's daily activities; (2) the location, duration, frequency, and  
17 intensity of pain and other symptoms; (3) precipitating and aggravating factors, such as movement, activity,  
18 and environmental conditions; (4) the type, dosage, effectiveness and adverse side effects of any pain  
19 medication; (5) treatment, other than medication, for relief of pain or other symptoms; (6) any other  
20 measures used by the claimant to relieve pain or other symptoms; and (7) other factors concerning the  
21 claimant's functional restrictions due to such symptoms. See 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3);  
22 see also Social Security Ruling ("SSR") 96-7p, 1996 WL 374186, at \*3 (clarifying the Commissioner's  
23 policy regarding the evaluation of pain and other symptoms). The ALJ also may employ "ordinary  
24 techniques of credibility evaluation," considering such factors as (8) the claimant's reputation for  
25 truthfulness; (9) inconsistencies within the claimant's testimony, or between the claimant's testimony and  
26 the claimant's conduct; (10) a lack of candor by the claimant regarding matters other than the claimant's  
27 subjective symptoms; (11) the claimant's work record; and (12) information from physicians, relatives, or  
28 friends concerning the nature, severity, and effect of the claimant's symptoms. See Light v. Social Sec.



1 Admin., 119 F.3d 789, 792 (9th Cir. 1997); Fair v. Bowen, 885 F.2d 597, 604 n.5 (9th Cir. 1989).

2       The ALJ articulated clear and convincing reasons for rejecting the alleged severity of plaintiff's pain  
3 complaints. As noted above, substantial evidence supports the ALJ's finding that plaintiff's lipoma did not  
4 cause functional limitations that lasted or were expected to last for twelve consecutive months. In making  
5 that finding, the ALJ permissibly rejected the alleged severity of plaintiff's pain complaints related to her  
6 lipoma. That determination was supported by the dearth of objective medical evidence of any functional  
7 impairment related to the lipoma, her conservative treatment history prior to excision of the lipoma, the  
8 absence of a longitudinal record of significant pain complaints about the lipoma by plaintiff to her doctors,  
9 and her testimony that indicating that removal of her lipoma "helped a lot."

10       Plaintiff also alleged that she had back pain from a "pinched nerve" or sciatica as well as right leg  
11 and knee pain. She said that her pain sometimes radiated up into her right arm and shoulder. She alleged  
12 that she suffered from depression.

13       The ALJ permissibly discredited plaintiff's subjective symptom allegations in part because they were  
14 out of proportion to the objective findings. [AR 22]. See Burch, 400 F.3d at 681 ("Although lack of medical  
15 evidence cannot form the sole basis for discounting pain testimony, it is a factor that the ALJ can consider  
16 in his credibility analysis."). X-rays of plaintiff's right knee were negative, while her lumbar spine MRI  
17 showed only mild stenosis and no nerve impingement. [AR 22-23]. The ALJ noted that plaintiff testified  
18 that her back and leg pain on the right side were related, and that removal of the lipoma helped her right side  
19 pain overall. [AR 19; see AR 419-420]. There was no evidence of complications or end organ damage from  
20 plaintiff's diabetes. [AR 23]. Plaintiff testified that medication helped her depression, and that her mental  
21 problems did not keep her from working. [AR 418]. Moreover, the treating source evidence established no  
22 severe mental functional limitations. [AR 22].

23       The ALJ also rejected the alleged severity of plaintiff's subjective symptoms and limitations because  
24 they were not consistent with the treatment she received. [AR 19, 23]. The ALJ noted, for example, that  
25 plaintiff testified that she started physical therapy in November 2005 after being placed on a waiting list,  
26 but she had not previously undergone physical therapy for her back or leg complaints. [AR 19, 239, 418].  
27 Although she alleged disabling back pain, plaintiff did not have a work-up of her lumbar spine with imaging  
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1 studies until May 2005. [AR 23]. Plaintiff did not take strong prescription pain medication.<sup>3</sup> [AR 19, 23,  
 2 29]. See Burch, 400 F.3d at 681 (holding that the ALJ did not err in discrediting the claimant's pain  
 3 testimony where she did not seek treatment for a period of four months, and observing that where the  
 4 claimant's pain was "not severe enough to motivate her to seek" consistent treatment, "is powerful evidence  
 5 regarding the extent to which she was in pain"); Osenbrock v. Apfel, 240 F.3d 1157, 1166 (9th Cir.  
 6 2001)(holding that the ALJ properly rejected the claimant's testimony because he did not use "Codeine or  
 7 Morphine based analgesics that are commonly prescribed for severe and unremitting pain"). On  
 8 examination by her attorney, plaintiff testified that she took pain medication, but she did not say what it was  
 9 or how often she took it. [AR 19, 418-420]. Although plaintiff testified that pain restricted her to short  
 10 intervals of sitting, standing, or walking, the ALJ accurately noted that plaintiff testified that she exercised  
 11 daily to alleviate her symptoms. [AR 19, 417, 419].

12 The ALJ permissibly relied in part on plaintiff's daily activities to find her subjective allegations not  
 13 fully credible. The ALJ cited disability reports indicating that even before successful excision of her  
 14 lipoma, she could care for herself, grocery shop twice a week, carry a bag of groceries three blocks, vacuum,  
 15 sweep, dust, do light mopping, and make her bed. [AR 98-115]. See Orteza v. Shalala, 50 F.3d 748, 750 (9th  
 16 Cir. 1995) (per curiam) (holding that the ALJ properly discredited the plaintiff's pain complaints based on  
 17 (1) the lack of objective evidence to support claims of pain and weakness, (2) the plaintiff's performance  
 18 of household chores (such as cooking, doing the dishes, going to the store, visiting relatives, and driving),  
 19 (3) the absence of side effects from medication, and (4) the fact that the plaintiff did not require prescription  
 20 pain medication). The ALJ noted that plaintiff did not need an assistive device to walk. [AR 23].

21 The ALJ did not arbitrarily reject the alleged severity of plaintiff's subjective complaints. Rather,  
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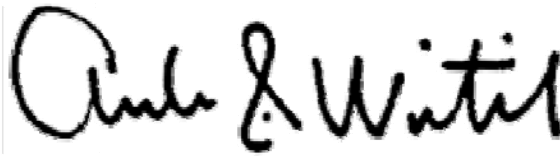
23 <sup>3</sup> Plaintiff asserts that she did take strong pain medication, and therefore that the ALJ's  
 24 reasoning is not convincing. [JS 10]. Based on the record before him, which showed no more than  
 25 intermittent use of Motrin and use of one Vicodin daily to manage post-surgical pain, the ALJ  
 26 rationally concluded that plaintiff's pain medication regimen was not commensurate with the degree  
 27 of pain she alleged. Plaintiff submitted some of her treatment records only to the Appeals Council,  
 28 such as the December 2004 progress report showing that plaintiff was prescribed Neurontin and  
 Tylenol with codeine in the weeks preceding her lipoma removal surgery. [AR 352]. Those records  
 do not deprive the ALJ's credibility finding of substantial support in the record as a whole. [See AR  
 171, 173-174, 168-169, 179, 188-189, 396-397, 416-420].

1 he articulated clear and convincing reasons, based on substantial evidence in the record as a whole, for  
2 rejecting plaintiff's subjective complaints of disabling pain. Accordingly, the ALJ's credibility finding will  
3 not be disturbed. See Rollins, 261 F.3d at 857.

4 **Conclusion**

5 For the reasons stated above, the Commissioner's decision is supported by substantial evidence and  
6 is free of legal error. Accordingly, the Commissioner's decision is **affirmed**.

7  
8 DATED: May 28, 2008

A handwritten signature in black ink, appearing to read "Andrew J. Wistrich". The signature is written in a cursive, flowing style.

10 ANDREW J. WISTRICH  
11 United States Magistrate Judge  
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